



Shri A.G. Uraizee, Asst. Govt. Pleader, for the  
Respondents

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CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 06/08/96

ORAL JUDGEMENT

The order passed by the Assistant Collector of Palitana (respondent No. 1 herein) on 27th February 1984 as affirmed in revision by the order passed by and on behalf of the State Government (respondent No. 2 herein) on 9th October 1984 is under challenge in this petition under Articles 226 and 227 of the Constitution of India. By his impugned order, respondent No. 1 ordered forfeiture of one parcel of land bearing survey No. 125/1 admeasuring 2 acres 1 guntha situated at village Ujalvav taluka Umralla district Bhavnagar (the disputed land for convenience) on the ground of breach of conditions of its grant.

2. The facts giving rise to this petition move in a narrow compass. The disputed land was granted to the petitioner on lease for 99 years some time in 1956 by the then State of Saurashtra for industrial purposes. It appears that the petitioner could not start any industry therein for more than 25 years. It appears that it came to the notice of the concerned Mamlatdar of Bhavnagar. He thereupon moved respondent No. 1 for an action under sec. 211 of the Bombay Land Revenue Code, 1879 (the Code for brief). Thereupon a show-cause notice came to be issued to the petitioner on 28th December 1983 calling upon the petitioner to show cause why action should not be taken against him with respect to the land in question. Its copy is at Annexure A to this petition. It appears that the petitioner received it some time on 9th January 1984. It appears that the petitioner applied for time and thereupon another notice came to be issued on 31st January 1984 fixing the date of hearing on 13th February 1984. Its copy is at Annexure B to this petition. It appears to have been received by the petitioner on 4th February 1984. It appears that the petitioner appeared before respondent No. 1 and stated that he could not start any industry in the disputed land on account of his adverse financial circumstances. Thereupon, by the order passed on 27th February 1984, respondent No. 1 forfeited the disputed land to the Government for breach of conditions of grant. Its copy is at Annexure C to this petition. The aggrieved petitioner carried the matter in revision before respondent No. 2 under sec. 211 of the Code. By the

order passed by respondent No. 2 on 9th October 1984, the revisional application came to be rejected. Its copy is at Annexure D to this petition. The aggrieved petitioner has thereupon approached this Court by means of this petition under articles 226 and 227 of the Constitution of India for questioning the correctness of the order at Annexure C to this petition as affirmed in revision by the order at Annexure D to this petition. It appears that during the pendency of this petition possession of the disputed land was taken away from the petitioner herein and was handed over to the Gram Panchayat of Ujalvav. Thereupon the petitioner moved Miscellaneous Civil Application No. 460 of 1986 for an action for breach of the injunction order passed by this Court. It is ordered to be heard along with the main matter.

3. Learned Advocate Shri Gandhi for the petitioner has urged that there was no condition in the order of grant that the petitioner was required to start his industry within the stipulated time-limit, and as such no question of breach of condition would arise. Learned Advocate Shri Gandhi for the petitioner has further submitted that respondent No. 1 has exercised revisional powers under sec. 211 of the Code more than 25 years after the date of the order of grant and it would not be open to him to exercise such powers after a long lapse of time. Learned Advocate Shri Gandhi for the petitioner has further urged that the report of the Mamlatdar for initiation of the proceeding under sec. 211 of the Code by respondent No. 1 was not supplied to the petitioner, and as such the impugned orders can be said to be in contravention of the principles of natural justice. As against this, learned Assistant Government Pleader Shri Uraizee for the respondents has submitted that the land should not be allowed to remain with the petitioner unproductively for an indefinite period. In that view of the matter, runs his submission, the impugned orders need not be interfered with.

4. It is not in dispute that the petitioner did not start an industry in the disputed land for more than 25 years. In fact, it was contended on behalf of the petitioner that no opportunity of hearing was given to him in the proceeding before respondent No. 1. It however transpires from the order at Annexure D to this petition that the petitioner was given an opportunity of hearing by respondent No. 1 and his statement was also recorded therein. He appears to have clearly admitted therein that he could not start any industry in the disputed land on account of his adverse financial

circumstances. It thus becomes clear that the land was kept unproductively with him for more than 25 years.

5. It is true that the lease was for a period of 99 years. It is however an admitted position that the disputed land was granted for industrial purposes. Even if no condition for starting any industrial activity within some time-limit was prescribed therein, the petitioner was required to undertake some industrial activity in the disputed land within some reasonable time. It has not been done so far. I think no land granted for a specific purpose should be allowed to be kept unproductively for as long as a quarter of a century. In that view of the matter, the impugned orders call for no interference by this Court in this petition under articles 226 and 227 of the Constitution of India.

6. So far as exercise of revisional powers after a period of 25 years is concerned, I think there is no substance in the submission for the simple reason that non-user of the disputed land for industrial purposes would be a continuous contravention of the order of grant. Since it was noticed by the authorities little belatedly, it would not mean that powers for forfeiture of the disputed land to the government could not be exercised when such powers are invoked. Besides, the remedy under art. 226 of the Constitution of India is discretionary. It is a settled principle of law that such discretion cannot be exercised in favour of the petitioner even if the order is found to be illegal if circumstances do not warrant for exercise of such discretion. I am fortified in my view by the Division Bench ruling of this Court in the case of Saurashtra Paper and Board Mills Pvt. Ltd. v. State of Gujarat and another reported in 1992(2) 33(2) G.L.R. 871. In that view of the matter, even if it is found that powers under sec. 211 of the Code are exercised beyond the period of reasonable time, the impugned orders need not be interfered with in this petition under article 226 of the Constitution of India on the aforesaid reasoning.

7. So far as non-supply of the report by the Mamlatdar is concerned, this point appears to have been taken up in this petition for the first time. No plea in that regard appears to have been taken before respondent No. 1 or before respondent No. 2. This would obviously be a new plea of fact. It cannot be permitted to be taken for the first time in this petition under Articles 226 and 227 of the Constitution of India.

8. It transpires from Miscellaneous Civil

Application No. 460 of 1986 that the possession of the disputed land has been taken away from the petitioner during the pendency of this petition and handed over to the Gram Panchayat of Ujalvav. Since the petitioner has lost possession of the disputed land, I think it is not necessary to exercise discretion in favour of the petitioner at this stage.

9. So far as the prayer contained in Miscellaneous Civil Application No. 460 of 1986 is concerned, there appears to be no substance therein. It appears that no interim relief has been granted in favour of the petitioner. It appears that the preliminary hearing with respect to the main matter had taken place on 12th April 1985. On that day the order for issue of notice making it returnable on 26th April 1985 was passed. No interim relief was granted. Its further preliminary hearing took place on 2nd May 1985 when the order of rule was issued. It appears that this Court ordered continuance of ad-interim relief thereby. Since no ad-interim relief was granted at any stage, no question of continuance of the ad-interim relief would arise. In that view of the matter, there was no operation of any ad-interim relief against taking over of possession from the petitioner. The question of breach of any injunction order would not therefore arise in this case.

10. In view of my aforesaid discussion, I am of the opinion that the impugned orders at Annexures C and D to this petition call for no interference by this Court in this petition under articles 226 and 227 of the Constitution of India. Similarly, no action deserves to be taken for the purpose of Miscellaneous Civil Application No. 460 of 1986.

11. In the result, both the writ petition and the Miscellaneous Civil Application made therein fail. Both are rejected. Rule issued on the writ petition is discharged with no order as to costs. The Miscellaneous Civil Application stands disposed of.

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